



Docket No. MERCK-1342-D01

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Bernhard SCHEUBLE et al.  
SERIAL NO: 09/909,876  
FILING DATE: July 23, 2001  
FOR: ELECTROOPTICAL SYSTEM

GAU: 2871  
EXAMINER: T. Duong

## AMENDMENT TRANSMITTAL

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

SIR:

Transmitted herewith is an amendment in the above-identified application.


- ☐ No additional fee is required.
- ☐ Applicant(s) is/are entitled to small entity status.
- ☒ Additional documents filed herewith: Petition For Extension Of Time; Reply

The fee has been calculated below:

CLAIMS	CLAIMS REMAINING		HIGHEST NO. PREVIOUSLY PAID FOR	NO. OF EXTRA CLAIMS	RATE		CALCULATIONS
TOTAL	13	MINUS	20	0	x	\$50 =	\$0.00
INDEPENDENT	6	MINUS	4	2	x	\$200 =	\$400.00
	<input type="checkbox"/> MULTIPLE DEPENDENT CLAIMS						
	TOTAL OF ABOVE CALCULATIONS						\$400.00
	<input type="checkbox"/> REDUCTION BY 50% FOR FILING BY SMALL ENTITY						\$0.00
	<input type="checkbox"/> RECORDATION OF ASSIGNMENT				+	\$40 =	\$0.00
	TOTAL						\$400.00

- ☒ A check in the amount of \$400.00 is attached.
- ☒ Please charge any additional fees for the papers being filed herewith and for which no check is enclosed herewith, or credit any overpayment to Deposit Account No. 13-3402. A duplicate copy of this sheet is enclosed.
- ☒ If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. § 1.136, and any additional fees required under 37 C.F.R. § 1.36 for any necessary extension of time may be charged to Deposit Account No. 13-3402. A duplicate copy of this sheet is enclosed.

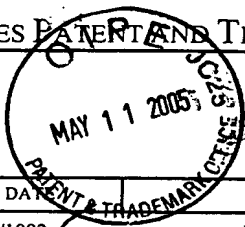
Respectfully submitted,

  
Csaba Henter, Reg. No. 50,908  
Attorney/Agent for Applicants

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UNITED STATES PATENT AND TRADEMARK OFFICE



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
07/828,904 ✓	02/03/1992	BERNHARD SCHEUBLE	MERCK1342 ✓	4397 ✓

23599 7590 11/30/2004

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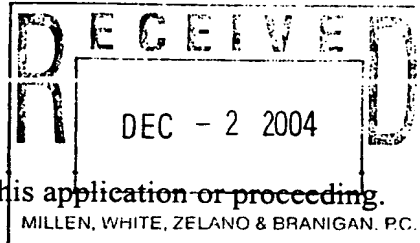
EXAMINER
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DUONG, TAI V

ART UNIT	PAPER NUMBER
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2871

DATE MAILED: 11/30/2004

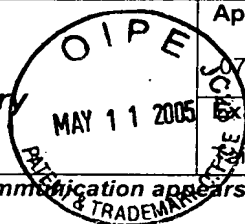


Please find below and/or attached an Office communication concerning this application or proceeding.

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.

ABANDONED IN FAVOR  
OF 1342-DO1

DMS  
12-2-04 J

**Office Action Summary**

Application No.

07/828,904

Applicant(s)

SCHEUBLE ET AL.

Examiner

Duong

Art Unit

2871

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09/29/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-5, 7, 8, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3, 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 4, 5, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Upon reconsideration, the amendment dated 09/15/03 has been entered. Claims 3-5, 7, 8, 14 and 15 are pending and claims 1, 2, 6, 9-13 and 16 have been canceled.

The specification is objected to because a Brief Description of the Drawings is required, as set forth in 37 CFR 1.74. See MPEP 608.01(f).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4, 5, 14 and 15 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4 and 6 of U.S. Patent No. 6,327, 010. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 3, 4 and 6 of the patent disclose all the recited features of the instant claims. That is, the instant claims are anticipated by the patent claims. As to claim 4, it would have been obvious to a person of ordinary skill in the art to delete the functional limitation "in order to achieve high contrast ... the color values" from the patent claim 1 for broadening the scope of the patent claim. Similar reasons are also applied to claims 5, 14 and 15.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al "Electrooptic Properties of Some Twisted Structures" cited by Applicant.

Claim 15 recites alternative limitations which are directed to alternative embodiments. One embodiment is "the *parallel* edge alignment and a twist angle of  $0 < \theta < 100$  with conditions (3), (4)" while the other embodiment is "the *homeotropic* edge alignment". For the homeotropic edge alignment, claim 15 is anticipated by Fig. 3 b) . See discussions of the recited features on pages 2 and 3 of the Baur article.

Claims 3, 7 and 8 are allowed because none of the prior art discloses or suggests a twisted nematic layer having a parallel edge alignment and a twist angle of  $0 < \theta < 100$  that satisfies the conditions (1), (2), (3) or (4) and one or more compensation layers being based on a twisted nematic liquid crystal , the twist angle of one or more compensation layers having essentially the same absolute value but the opposite rotational sense as , and the director of the LC molecules and the optical axes of the one or more compensation layers forming an angle of  $30^\circ$  to  $150^\circ$  at the surfaces of the second substrate.

Art Unit: 2871

Any inquiry concerning this communication should be directed to Tai Duong at telephone number (571) 272-2291.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

  
TOANTON  
PRIMARY EXAMINER



TVD

11/04